

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D C. 20554

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JAN 23 2004

In the Matter of)
)
 Amendment of Section 73 622(b),)
 Table of Allotments,)
 Digital Television Broadcast Stations)
 (Corpus Christi, Texas))

Federal Communication Commission
 Bureau / Office

MM Docket No. 99-277
 RM-9666

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To: Chief, Video Division, Media Bureau

Federal Communication Commission
 Office of the Secretary

REPLY

1. Channel 7 of Corpus Christi, Inc ("Channel 7") filed a petition for reconsideration of the Report and Order¹ in the above-captioned proceeding on January 6, 2004. Channel 3 of Corpus Christi, Inc ("KIII") filed an Opposition on January 16, 2004. This is Channel 7's Reply to KIII's Opposition

2 KIII either misses or ignores Channel 7's major point, which is that the Media Bureau acted contrary the Commission's statutory obligation under the Community Broadcasters Protection Act of 1999 ("CPBA"); and it does not matter when, or even whether, Channel 7 or its predecessor, Sound Leasing, Inc., filed comments or raised the issue. The Commission is bound by the statute, it is just that simple.

3 KIII's advances two principal arguments. One is that Channel 7's pleadings are late-filed, and the only timely filed opposing comments were withdrawn by Sound Leasing, Inc. In response, Channel 7 can only reiterate that the Commission's obligation to comply with a statute does depend on who demands compliance or when they demand it. The Report

¹ *Amendment of Section 73 622(b), Table of Allotments, Digital Television Broadcast Stations (Corpus Christi, Texas)*, 18 FCC Rcd 23949, DA 03-3641, rel. Nov 19, 2003, 68 Fed Reg 68254 (Dec 8, 2003).

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and Order treats this matter the same as any other issue involving one station's interests pitted against another, where the orderly dispatch of the Commission's business requires strict adherence to cut-off dates. But this issue is different, because administrative pleading deadlines cannot be used to deprive Channel 7's Station KTOV-LP of its statutory spectrum protection that was acquired in accordance with the timeline set forth in the statute.

4 Second, KIII argues that the Commission has already disposed of the issue of priority between KTOV-LP and KIII(TV), in a letter dated March 22, 2002 ("Letter Ruling"). The Letter Ruling gave KIII(TV) priority because comment deadline in the instant rulemaking came before the effective date the CBPA. But as KIII recognizes at fn. 8 of its Opposition, Channel 7 filed a petition for reconsideration of the Letter Ruling, so the Letter Ruling is not a final order. As shown in that petition for reconsideration, KIII(TV) neither was nor is entitled to priority, because it did not meet the requirements of the CBPA to have priority. It never claimed that it needed to move to Channel 8 to replicate its analog coverage,² it did not file the required timely maximization application, and it has not demonstrated "technical problems" which require an "engineering solution." All three elements are separate statutory prerequisites to preferring KIII's proposal over protecting KTOV-LP. Therefore, the Letter Ruling is no reason to deny reconsideration in the instant proceeding.³

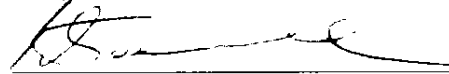
² As noted in Channel 7's Petition for Reconsideration in the instant proceeding, the only replication claim has been that to save money, KIII would not build full facilities on DTV Channel 47 but it would replicate its analog service area on DTV Channel 8. KIII's desire to save money does not at all demonstrate that replication is not feasible on DTV Channel 47.

³ KIII also indicates that Minerva R. Lopez, licensee of Station KTMV-LP, did not seek reconsideration of the Report and Order. Channel 7 received by mail a copy of a petition for reconsideration by Ms. Lopez, dated January 7, 2004, indicating that it was sent by facsimile to the Commission at 202-418-2827. However, Channel 7 has no independent knowledge of whether the petition was ever faxed on that date or was faxed at all.

5 In sum, KIII's arguments have the same defect as the Report and Order – they focus on administratively-promulgated time deadlines that are not relevant to the application of statutory protection to KTOV-LP. The CBPA requires that the allotment of DTV Channel 8 to Corpus Christi be set aside

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Respectfully submitted,



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January 23, 2004

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CERTIFICATE OF SERVICE

I, Daniella K. Mattioli Knight, do hereby certify that I have, this 23rd day of January, 2004, caused to be sent by first class United States mail, postage prepaid, copies of the foregoing "Reply" to the following

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Service is hereby accepted on behalf of the Community Broadcasters Association.


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